

REMARKS

Initially, Applicant expresses appreciation to the Examiner for the courtesies extended in the recent in-person interview held with Applicant's representative. The amendments and remarks submitted herein are generally consistent with the discussions during the interview. Accordingly, entry of this amendment and reconsideration of the pending claims is respectfully requested.

The Office Action, mailed November 11, 2006, considered and rejected claims 11-53. Claims 11, 19, 20, 22, 37, 39 and 50 were rejected under 35 U.S.C. § 112, second paragraph, as being indefinite.¹ Claims 11-14 and 16-50 were rejected under 35 U.S.C. § 102(b) as being anticipated by *Wakamiya* (U.S. Patent No. 5,689,477). Claim 15 was rejected under 35 U.S.C. § 103(a) as being obvious in view of *Wakamiya*.²

By this paper, claims 11, 13, 14, 18-20, 22, 25, 37, 39-41, 45 and 50-52 have been amended, while no claims have been added or cancelled.³ Accordingly, following this paper, claims 11-53 remain pending, of which claims 11, 25, 45 and 52 are the only independent claims at issue.

As discussed during the interview, the pending claims generally relate to methods and systems for transmitting data at a rate that does not result in packets being dropped by a network. As reflected in claim 11, for example, a node that requests the services is provided with a price of the services which is related to the total current network traffic and the overall capacity of the network. The requesting node then uses that price information to adjust its own data transmission rate, as necessary based on a predetermined weight value that is set by an administrator of the node.

¹ As discussed during the interview, Applicant respectfully submits that the rejections under 35 U.S.C. 112, second paragraph are now moot, particularly in view of the amendments in which "willingness to pay" threshold values have been replaced by "weight value." Although Applicant has amended the claims, Applicant has done so to advance prosecution and not for any reason related to patentability inasmuch as in view of the disclosure and the knowledge of one of ordinary skill in the art, the phrase "willingness to pay" is not indefinite. Indeed, as discussed during the interview, numerous other patents include the same phrase in their respective specifications and claims.

² Although the prior art status of the cited art is not being challenged at this time, Applicant reserves the right to challenge the prior art status of the cited art at any appropriate time, should it arise. Accordingly, any arguments and amendments made herein should not be construed as acquiescing to any prior art status of the cited art.

³ Support for the claim amendments can be found throughout Applicant's originally filed application. By way of example, support for the claim amendments can be found on pages 27 and 30-35 of the original application, as well as in the originally filed claims and figures.

Independent claim 25 recites a system which includes elements for determining the price, monitoring the network load, and adjusting the data transfer rate in accordance with the method of claim 11. Independent claim 45 recites a method generally corresponding to the system of claim 25, and independent claim 52 recites a method generally corresponding to the method of claim 11.

As also discussed during the interview, while *Wakamiya* generally relates to determining pricing of data transmission services, it fails to disclose or suggest each and every element of the recited claims. For example, among other things, *Wakamiya* fails to disclose or suggest a method or system in which a node that requests data transmission services adjusts its rate of data transmission, as recited in combination with the other claim elements.

In particular, *Wakamiya* generally discloses a reactive system in which a client makes a service request. After the service request is made, the system providing the services determines appropriate pricing based on the service it was then able to provide. Specifically, a client specifies its service class to be provided, each class having a specified resource levels that should be allocated to achieve, for a specified cost, a particular data transmission time for a particular document size. If the service cannot be provided to match the requested resource levels, the service is delayed until a low network load. After the service is provided, a comparison is made to determine whether the requested resources matched the availed resources. If not, an adjustment to the price (i.e., accounting quantity) of the service is made. In this manner, if the service is not provided with the desired quality, the price for the service is decreased by the service offering system. Accordingly, all adjustments in price and in quality (e.g., transfer rate) are made by the service offering system, rather than the requesting system. .

In view of the foregoing, Applicant respectfully submits that the other rejections to the claims are now moot and do not, therefore, need to be addressed individually at this time. It will be appreciated, however, that this should not be construed as Applicant acquiescing to any of the purported teachings or assertions made in the last action regarding the cited art or the pending application, including any official notice. Instead, Applicant reserves the right to challenge any of the purported teachings or assertions made in the last action at any appropriate time in the future, should the need arise. Furthermore, to the extent that the Examiner has relied on any Official Notice, explicitly or implicitly, Applicant specifically requests that the Examiner

provide references supporting the teachings officially noticed, as well as the required motivation or suggestion to combine the relied upon notice with the other art of record.

In the event that the Examiner finds remaining impediment to a prompt allowance of this application that may be clarified through a telephone interview, the Examiner is requested to contact the undersigned attorney by telephone at (801) 533-9800.

Dated this 28th day of February, 2007.

Respectfully submitted,



RICK D. NYDEGGER
Registration No. 28,651
JENS C. JENKINS
Registration No. 44,803
COLBY C. NUTTALL
Registration No. 58,146
Attorneys for Applicant
Customer No. 47973

RDN:JCJ:CCN:gd
AHY0000002866V001